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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Ex parte STEVEN D. CURTIN

Appeal 2011-003936
Application 09/747,937
Technology Center 2400

Before ROBERT E. NAPPI, JOHN G. NEW, and JUSTIN BUSCH,
Administrative Patent Judges.

BUSCH, *Administrative Patent Judge.*

DECISION ON APPEAL

Appellant appeals under 35 U.S.C. § 134(a) from the Examiner's final rejection of claims 1, 3, 5-7, 9, 11, 14, 16, 18, and 21. We have jurisdiction under 35 U.S.C. § 6(b).

We AFFIRM.

Introduction

According to Appellant, the invention relates to a system and method for protecting information previously recorded on a video tape through a signal detection element to determine if pre-existing information exists on the video tape. Spec. 1 ll. 8-10.

STATEMENT OF THE CASE

Exemplary Claim

Claim 1 is an exemplary claim and is reproduced below:

1. An electronic write protect apparatus for storage media comprising:
 - at least one record element for writing information to a given magnetic storage media;
 - a pre-existing electronic information signal detection element to detect a pre-existing electronic information signal stored on said given magnetic storage media; and
 - a record deactivation circuit to prevent recording on said given magnetic storage media when said pre-existing electronic information signal detection element detects said pre-existing electronic information signal stored on said given magnetic storage media, said deactivation occurring at or about a time of occurrence of said detection of said pre-existing information signal.

References

Go	5,936,786	Aug. 10, 1999 (Filing Date: Sep. 26, 1996)
Nagasawa	5,877,906	Mar. 2, 1999 (Filing Date: May 17, 1996)
Kurihara	6,442,108 B1	Aug. 27, 2002 (Filing Date: Mar. 15, 2000)

Rejections

Claims 1, 3, and 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Go and Nagasawa.

Claims 1, 3, and 5-7 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurihara, Go, and Nagasawa.

Claims 9, 11, 14, 16, 18, and 21 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Kurihara, Official Notice, and Nagasawa.

ISSUES

35 U.S.C. § 103(a) (Go and Nagasawa): claims 1, 3, and 5-7

Appellant argues the invention is not rendered obvious by the combination of Go and Nagasawa. App. Br. 5-7. Specifically, Appellant argues that modifying Go with the teachings of Nagasawa would change the principle of operation of Go. App. Br. 6-7.

Issue: Has the Examiner erred in finding that the combination of Go and Nagasawa teaches “deactivation occurring at or about a time of occurrence of said pre-existing information signal” as recited in claim 1?

35 U.S.C. § 103(a) (Kurihara, Official Notice, and Nagasawa): claims 9, 11, 14, 16, 18, and 21

Appellant argues the invention is not rendered obvious by the combination of Kurihara, Official Notice, and Nagasawa. App. Br. 8-10. Specifically, Appellant argues that Kurihara does not teach “deactivating a record circuit as detection of a pre-existing [signal] occurs” as recited in claim 9. App. Br. 9.

Issue: Has the Examiner erred in finding that the combination of Kurihara, Official Notice, and Nagasawa teaches “deactivating a record circuit in said video cassette player at or about a time of occurrence of said detection of said pre-existing signal” as recited in claim 9?

ANALYSIS

We have reviewed the Examiner’s rejections in light of Appellant’s contentions that the Examiner has erred. Further, we have reviewed the Examiner’s response to each of the arguments. We agree with the Examiner.

Appellant’s only argument with respect to independent claim 1 and dependent claims 3 and 5-7 is that “the principle of operation of Go is to scan an entire recording medium . . . positioning a recording head to a

selected portion of the recording medium where there is no information, and then activating recording” and that “[m]odifying Go to deactivate recording at or about the time of occurrence of a control pulse, thereby NOT scanning the entire medium first, would clearly change the principle of operation of Go.” App. Br. 7.

The Examiner finds that modifying Go to scan one portion instead of the entire portion would merely lead one of ordinary skill in the art to remove one of the plurality of features of Go and would thus not change the principle of operation of Go. Ans. 13. Additionally, the Examiner finds that “deactivation occurring at or about a time of occurrence of said detection of said pre-existing information signal” is not defined by or located in Appellant’s specification and must therefore be given the broadest reasonable interpretation consistent with Appellant’s disclosure. Ans. 15-16. Therefore, because Go “teaches detecting, deactivation or activation and recording all performed one after the other, i.e., at the time of occurrence,” Go teaches “deactivation occurring at or about a time of occurrence of said detection of said pre-existing information signal.” Ans. 14. Finally, the Examiner points out that if “Go includes a control pulse in all portions of the recording medium, recording of new information [is] disabled,” thereby meeting the limitation of “deactivation occurring at or about a time of occurrence of said detection of said pre-existing information signal” as recited in claim 1. Ans. 15. We adopt the Examiner’s findings with respect to the teachings of Go and the fact that modifying Go does not change its principle of operation and we highlight certain points below.

The broadest reasonable interpretation of the claim language does not exclude a scenario where a system scans the entire storage media. Therefore, in the case where the storage media is full, the system in Go will scan the entire tape and, when the end of the tape is reached and a pre-existing signal is detected at the end of the tape, deactivate recording. In such a scenario, Go teaches the limitation of claim 1. Moreover, because the principle of operation of Go is to scan the storage media and identify a portion of unrecorded tape upon which the system may begin recording, modifying Go to scan only a portion of the tape would not change the principle of operation of Go. As discussed above, the broadest reasonable interpretation of the claim language does not preclude a situation where the entire tape is scanned. The suggested combination of Go with Nagasawa does not prevent scanning the entire storage media either, but adds the element of deactivating recording at or about the time of occurrence of detection of a pre-existing information signal (disclosed by Nagasawa) to the system of Go. Ans. 5. Thus, the combination of Go and Nagasawa does not change the principle of operation of Go.

Therefore, we agree with the Examiner that the combination of Go and Nagasawa discloses “deactivation occurring at or about a time of occurrence of said detection of said pre-existing information signal” as recited in independent claim 1. Appellant does not present a separate argument for the patentability of dependent claims 3 and 5-7 (each of which ultimately depends from claim 1) over the combination of Go and Nagasawa. Therefore, dependent claims 3 and 5-7 fall with independent claim 1.

Appellant's only argument with respect to the rejection of claims 1, 3, and 5-7 as obvious in view of the combination of Kurihara, Go, and Nagasawa is that Kurihara does not cure the deficiencies as argued with respect to the combination of Go and Nagasawa. As we do not find any deficiencies in the combination of Go and Nagasawa, we do not find error with the Examiner's finding of obviousness of claims 1, 3, and 5-7 in view of the combination of Kurihara, Go, and Nagasawa.

With respect to independent claim 9, the Examiner finds that: (1) Kurihara detects a signal to determine *whether or not* a tape is blank and deactivates recording when the tape is not blank; (2) Appellant is arguing that Kurihara does not teach "deactivating a record circuit in said video cassette player at or about a time of occurrence of said detection of said pre-existing signal" when the rejection is based on the *combination* of Kurihara, Official Notice, and Nagasawa; and (3) "at or about a time of occurrence of said detection of said pre-existing signal" is not defined and must be given its broadest reasonable interpretation. Ans. 16-17.

Appellant's only argument regarding the rejection of claim 9 is that the combination of Kurihara, Official Notice, and Nagasawa does not teach "deactivating a record circuit in said video cassette player at or about a time of occurrence of said detection of said pre-existing signal." App. Br. 8-9. Appellant argues that Kurihara teaches *activating* recording as opposed to *deactivating* recording upon detection of a pre-existing signal. App. Br. 9.

As an initial matter, and as stated above, we agree with the Examiner that the broadest reasonable interpretation of "at or about a time of occurrence of said detection of said pre-existing signal" is not as restrictive

as Appellant's characterization of the language. Additionally, to the extent that Appellant is arguing that Kurihara alone does not teach "deactivating a record circuit in said video cassette player at or about a time of occurrence of said detection of said pre-existing signal," the Examiner is correct that arguing against Kurihara when the rejection is under the combination of Kurihara, Official Notice, and Nagasawa is insufficient.

However, we understand Appellant's argument to be that Kurihara teaches *activation* of recording as opposed to *deactivation* of recording upon detection of a pre-existing signal and thus, Kurihara teaches the *opposite* function of what is claimed in independent claim 9. App. Br. 8-9. Appellant states that in Kurihara, recording is activated if there is not a TOC. *Id.* Appellant then asserts that the Examiner has equated detection of a pre-existing signal to whether the tape is blank. App. Br. 9. However, looking at the rejection of claim 9, the Examiner has mapped detection of "a pre-existing video signal" to the detection of a signal in order to determine *whether or not* the tape is blank and mapped "deactivating a record circuit" to not recording when the tape is not blank. Ans. 9, 16. Therefore, determining that there is a TOC may be interpreted as detecting a signal, in which case Kurihara teaches deactivating a record circuit upon detection of a signal, regardless of what may occur after that deactivation. Even accepting Appellant's mapping to read Kurihara as only detecting a signal when the TOC is *not* present, Kurihara is performing the opposite function of what is claimed, which is merely an obvious variation of the disclosed function. *In re Gazda*, 219 F.2d 449, 452, 104 USPQ 400, 402 (CCPA 1955) (modifying a

known function by reversing the known functions is an obvious variation and, thus, not inventive or patentable).

Therefore, we agree with the Examiner that independent claim 9 is obvious in view of the combination of Kurihara, Official Notice, and Nagasawa. Independent claim 16 contains similar limitations to those in claim 9 and Appellant makes no further arguments with respect to claim 16. Therefore, we agree with the Examiner that claim 16 is obvious in view of the combination of Kurihara, Official Notice, and Nagasawa for the same reasons as discussed above with respect to claim 9. Dependent claims 11 and 14, and dependent claims 18 and 21, which depend from independent claims 9 and 16, respectively, were not argued separately from independent claims 9 and 16, and therefore fall with the rejection of claims 9 and 16 under 35 U.S.C. § 103(a).

DECISION

The Examiner's rejection of claims 1, 3, and 5-7 under 35 U.S.C. § 103(a) as being obvious in view of Go and Nagasawa is affirmed.

The Examiner's rejection of claims 1, 3, and 5-7 under 35 U.S.C. § 103(a) as being obvious in view of Kurihara, Go, and Nagasawa is affirmed.

The Examiner's rejection of claims 9, 11, 14, 16, 18, and 21 under 35 U.S.C. § 103(a) as being obvious in view of Kurihara, Official Notice, and Nagasawa is affirmed.

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No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv)(2010).

AFFIRMED

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